

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JOSE LUIS GUILLEN #677117	§	
v.	§	CIVIL ACTION NO. 5:04cv16
DR. REGINALD STANLEY, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Jose Guillen, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Court obtained materials pertinent to a just and fair adjudication of the claims, a procedure authorized by the Fifth Circuit in Cay v. Estelle, 789 F.3d 318 (5th Cir. 1986) and Parker v. Carpenter, 978 F.2d 190, 191-92 n.2 (5th Cir. 1992). These materials are known as a “Martinez report” after Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978), which was cited with approval by the Fifth Circuit in Cay and Parker. Guillen was furnished with a copy of the Martinez Report given the opportunity to file a response thereto; he did not file a response *per se*, but did file a motion for summary judgment.

After review of the materials and the pleadings, the Magistrate Judge issued a Report on June 16, 2006, recommending that the lawsuit be dismissed. The Magistrate Judge set out the contents of the Martinez Report and reviewed Guillen's motion for summary judgment and his summary judgment evidence. The Magistrate Judge then examined the pertinent legal standards applicable to cases claiming deliberate indifference to the serious medical needs of prisoners. *See*

Domino v. TDCJ-CID, 239 F.3d 752, 756 (5th Cir. 2001); Stewart v. Murphy, 174 F.3d 530, 534 (5th Cir. 1999). Upon this examination, the Magistrate Judge concluded that Guillen failed to meet the standard of deliberate indifference as set out in the Fifth Circuit caselaw, and recommended that the lawsuit be dismissed as frivolous.

Guillen received a copy of the Magistrate Judge's Report on June 21, 2006, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 24th day of July, 2006.


DAVID FOLSOM
UNITED STATES DISTRICT JUDGE